

Exhibit B-1 Contract Administration Plan

A. Purpose

1.0 This Contract Administration Plan is included to set forth the general contract administration activities and actions that are to be managed or taken by the ORCA Operations Manager, Joint Board or Agencies during the Operating Phase. The Agencies intend that the authorities of the ORCA Operations Manager and Joint Board are to be generally consistent with the usual grants of authorities for administration of contracts awarded by a public agency, notwithstanding the fact that each Agency may have specific policies and practices related to contract administration that are different from those described herein.

2.0 This Plan is intended to be consistent with grant requirements established by the Federal Transit Administration (FTA). If FTA grant requirements differ from provisions in this Plan, the FTA grant requirements shall prevail.

3.0 In general, the Joint Board has responsibility for overseeing the performance of the ORCA Operations Group, Joint Consultants and the Contractor. The ORCA Operations Manager has responsibility for the day-to-day management of the ORCA Operations Group. The ORCA Operations Manager shall be responsible for managing the administration of the RFC Contract and contracts with Joint Consultants, and shall make all decisions except those decisions identified in this Agreement that shall be made by the Joint Board or governing bodies of the Agencies consistent with the level of monetary expenditure authorized by the Joint Board. The ORCA Operations Manager, and members of the ORCA Operations Group designated by the ORCA Operations Manager, will monitor the performance of Joint Consultants and the Contractor and maintain a contract administration system that ensures that the consultants and the Contractor perform in accordance with the terms, conditions and specifications of the contracts.

4.0 The Agencies acknowledge that it is essential the ORCA Operations Manager serve as the sole communication conduit with Joint Consultants and the Contractor. Except for the limited roles of the Agency Site Managers, the Agencies and members of the Joint Board shall refrain from communicating directly with the Joint Consultants and the Contractor, unless specifically designated by the ORCA Operations Manager. However, each Agency may communicate directly with the Contractor as necessary for specialized applications (which are the sole responsibility of the Agency).

5.0 The Agencies acknowledge that the RFC Project has been designated an ITS test site. The Agencies shall cooperate in meeting the ITS test site requirements and, to the extent possible, provide evaluation data including before and after effectiveness data. All costs related to meeting the ITS test site requirements shall be shared by the Agencies.

B. Definitions

1.0 Contract Administration is the post-award administration of the contract to ensure compliance with the terms of the contract by both the Contractor or a consultant, as applicable, and the Agencies.

2.0 ORCA Operations Manager's Documentation is the documentation contained in the contract file maintained by or on behalf of the ORCA Operations Manager. The documentation

describes the actions taken by the contracting parties in accordance with the requirements of the contract and documents the decisions made in the administration of the contracts. This file shall contain a Contract Folder, which shall contain the official documentation relating to the procurement, award, execution, administration and closeout of the contract. The file shall, as a minimum, include the following materials:

- a. Executed contract and notice of award;
- b. Letter of credit, performance and payment bonds, or approved alternative security, bond-related documentation, and correspondence with any sureties or banks;
- c. Contract-required insurance documentation;
- d. Post-award (pre-performance) correspondence from or to the consultant or contractor or other governmental agencies;
- e. Notice to proceed;
- f. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- g. Modifications/changes to the contracts, including the rationale for the change, change orders issued, and documentation, including price/cost analysis documentation, reflecting any time and increases to or decreases from the contract price as a result of the modifications;
- h. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
- i. Documentation regarding any stop work and suspension of work orders and termination actions (convenience as well as default); and
- j. Documentation relating to contract close out.

Any Agency may request copies of the Contract Folder or the ORCA Operations Manager's File, particularly if required to satisfy grant requirements. If an Agency receives a public disclosure request for any of the materials in the Contract Folder, the Agency may forward the request to the ORCA Operations Manager, who shall administer it in accordance with the policies and practices of the Agency with whom the ORCA Operations Manager is employed.

3.0 Change Order includes any written change to the contract terms, conditions, specifications, scope, schedule or price, and may be either bilateral or unilateral.

C. RFC Contract

1.0 The Agencies agree that the ORCA Operations Manager shall act as the sole conduit for communications to and from the Contractor relating to the administration of the RFC Contract, unless the ORCA Operations Manager specifically authorizes otherwise. However, each

Agency may communicate directly with the Contractor as necessary for specialized applications (which are the sole responsibility of the Agency).

2.0 For the RFC Contract, the ORCA Operations Manager is responsible for the following functions. The ORCA Operations Manager may delegate specific activities required to perform these functions to various members of the ORCA Operations Group:

- a. Monitor compliance with contract terms & conditions;
- b. Coordinate communications and information with decision-making board;
- c. Coordinate with the Agency Site Managers to review contractor milestone deliverables, per the prescribed 45-day agency review time frame. The task and time decomposition of the 45-day review period is generally understood to be as follows – described in business days: **1**) ORCA Operations Manager receives electronic copies of contractor documents and distributes one set to each Agency Site Manager [1 – 2 days]; **2**) Agency Site Manager duplicates material, as required, and distributes internally to reviewers [3 – 4 days]; **3**) Individual staff review period [10 days]; **4**) Agency Site Manager performs internal coordination necessary to clarify comments and/or reconcile differences of opinion and prepares one consolidated agency response which is submitted to the ORCA Operations Manager [5 days]; **5**) ORCA Operations Manager prepares one consolidated draft regional response and identifies issues and/or differences of opinion, which is provided to the Agency Site Managers [5 days]; **6**) ORCA Operations Manager and Agency Site Managers meet to resolve conflicts/issues; ORCA Operations Manager prepares one final regional response which is submitted to the Contractor [5 days].
- d. Monitor the Contractor's compliance with federal, state and local law and regulations;
- e. Monitor regional project compliance by the Contractor and Agencies with banking and financial laws, regulations & rules;
- f. Recommend to the Joint Board approval of additional card applications and revenue by Agencies;
- g. Recommend to the Joint Board approval of the Contractor's publicity materials and work-related copy by Agencies;
- h. Coordinate regional communications with Site Managers and facilities;
- i. Monitor compliance with the submission of contract documentation requirements;
- j. Monitor compliance with federal Section 504, ADA and other federal and state civil rights requirements;
- k. Individual Agencies may acquire grant funds, which mandate compliance with specific requirements. To the extent that the grantee Agency gives the ORCA Operations Manager written notification of any such grant requirements, the ORCA Operations Manager will use good faith efforts to comply with such grant requirements;
- l. Review and approve training program and instructors;

- m. Conduct post-award orientation with ORCA Operations Group, Agencies and the Contractor;
- n. Serve as communication conduit between Agencies and the Contractor;
- o. Respond to information and public disclosure requests from the public and mass media;
- p. Monitor progress and performance by the Contractor;
- q. Oversee compliance with inspections and testing requirements;
- r. Monitor compliance with quality assurance and control plan;
- s. Monitor compliance with program management, progress and performance monitoring plan;
- t. Identify and resolve performance deficiencies;
- u. Confirm quality and quantity of work performed;
- v. Manage Change Order/Amendment process;
- w. Perform cost/price analysis of Change Orders and Amendments as necessary;
- x. Manage the invoice review, approval and payment processes;
- y. Monitor expenditures for new work/system enhancements and report to Joint Board;
- z. Administer the claims and disputes processes;
- aa. Administer the defective work, materials or services processes;
- bb. Administer warranties and guarantees;
- cc. Manage the contract closeout process;
- dd. Prepare and maintain the Contract Folder;
- ee. Comply with records retention requirements for Contract Folder.

3.0 The ORCA Operations Manager shall develop or cause to be developed appropriate procedures and practices for the items listed above. The ORCA Operations Manager may amend such procedures and practices as necessary to meet grant conditions, legal requirements, and RFC Project needs.

D. RFCS Contract Change Orders and Amendments

1.0 Any Agency may request new work to be performed by a Change Order or Amendment to the RFCS Contract by submitting a written request to the ORCA Operations Manager. The request shall describe the new work requested, the estimated cost of such new work, and the

expected benefit of such new work. The Joint Board shall be advised of the requested new work. The ORCA Operations Manager will proceed with the negotiation of a Change Order or Amendment according to the procedures outlined in this subsection.

2.0 Each Agency, by written direction from its Site Manager, shall delegate to the ORCA Operations Manager its authority to negotiate and execute a Change Order or Amendment subject to the following conditions:

- a. Regional work (work determined to benefit the region) may be requested and authorized by the Agencies' Site Managers; provided the regional work:
 - i. Does not, when added to all Change Orders and Amendments approved through this delegated authority, exceed a total of \$2,800,000 in added contract costs; and
 - ii. Does not exceed \$100,000 in added contract cost.

All costs associated with a Change Order or Amendment for regional work requested and authorized by the Agencies under this Section 2.0 a. shall be paid by all Agencies as a shared regional cost.

- b. Non-regional work (work determined to benefit one or more Agencies, but not all Agencies) may be requested and authorized by the benefitted Agencies' Site Manager, provided that all Site Managers have:
 - i. Evaluated availability of contractor resources; and
 - ii. Determined the work does not negatively affect other Agencies; and
 - iii. The work does not exceed \$100,000.

All costs associated with the Change Order or Amendment for non-regional work requested and authorized by the Agencies under this Section 2.0 b. shall be paid for by the requesting Agency or Agencies.

3.0 All Change Orders or Amendments for regional new work that do not meet the conditions in Section 2.0 must be approved by all Joint Board members.

4.0 All Change Orders or Amendments for non-regional work in excess of \$100,000 will be signed by the benefitted Agency(ies)' Joint Board member(s).

E. RFCS Contract Claims

During the RFCS Contract, the Contractor may file a Contract Claim to request additional time and/or money. The ORCA Operations Manager shall notify each Agency of each Change Order and/or Amendment the ORCA Operations Manager approves or rejects as a result of a Contract Claim filed by the Contractor. Each Agency delegates to the ORCA Operations Manager its authority to negotiate and approve Contract Claims subject to the same limitations as regarding Change Orders set forth in paragraph D above.

F. Joint Consultant Contracts

1.0 The Agencies agree that the ORCA Operations Manager shall act as the single conduit for communications to and from consultants relating to the administration of Joint Consultant contracts, except as specifically authorized otherwise by the ORCA Operations Manager. However, each Agency may communicate directly with Joint Consultants as necessary to enable the consultants to perform work tasks.

2.0 Each Agency's Site Manager shall be responsible for coordinating communications with the Joint Consultants. An Agency's Site Manager shall:

- a.** Coordinate with the ORCA Operations Manager on a regular basis to avoid conflicts and interface disconnects;
- b.** Provide information to consultants as requested for each task deliverable;
- c.** Identify Agency staff for consultants to interview and provide existing documents to consultants;
- d.** Collect information and provide it to consultants based on templates as provided by consultants; and
- e.** Create a record and provide a copy to the ORCA Operations Manager of the review and comments submitted by an Agency to consultants.

G. Joint Consultants Contract Change Orders and Amendments

1.0 The ORCA Operations Manager shall notify each Agency of any Change Orders and Amendments the ORCA Operations Manager approves. Each Agency delegates to the ORCA Operations Manager its authority to negotiate and approve Change Orders and Amendments, if each Change Order and Amendment does not exceed \$10,000 in added contract cost.

H. Deliverables Under Joint Consultant Contracts

Each Agency shall review proposed contract deliverables under Joint Consultant contracts and provide the ORCA Operations Manager with a written approval or objection. Approval of deliverables shall not be unreasonably withheld by an Agency. If the ORCA Operations Manager has not received an Agency's signed, written objection to a deliverable within five (5) days after the Agency has received a copy of the deliverable, the Agency shall be deemed to have accepted the deliverable as submitted. If one or more Agencies raises an objection in writing that a deliverable is not satisfactory, the ORCA Operations Manager shall forward the objection to the consultant for resolution. If an objection is not resolved and the Agencies are in disagreement as to whether a deliverable is satisfactory, the Joint Board shall meet within seven (7) days after the consultant indicates it is unable to resolve the objection. The Joint Board shall make a unanimous final determination about whether to accept the deliverable. Upon acceptance of a deliverable, the ORCA Operations Manager shall notify the consultant in writing of the acceptance. The consultant may then submit an invoice pursuant to the payment provisions of the consultant contract.

I. Claims Against Joint Consultants

In the event one or more of the Agencies intends to file a claim against a Joint Consultant during the term of the contract or at any point after the contract has expired or otherwise terminated, such Agency shall notify the other Agencies at least thirty (30) days in advance of filing the claim and comply with the provisions in Section V.I-K of the Agreement to which this exhibit is attached.

J. Protection of Contractor IP

1.0 Purpose

The RFC Contractor is required to provide the Agencies with certain information and documents that are considered "Contractor IP" or "IP Materials for Contractor IP" under the RFC Contract. Under RFC Contract Section 35.5.1, the following CDRLs are considered Contractor IP except to the extent they constitute DDU IP.

- #1 Conceptual Design Review
- #2 Preliminary Design Review
- #3 Final Design Review
- #16 System Integration Test Plan
- #31 System Security Plan

Certain elements of Software Documentation (CDRL #37) and other information provided to the Agencies may also constitute Contractor IP or IP Materials for Contractor IP.

The Agencies are required by RFC Contract Section 35.4.3(e) to undertake "reasonable protective measures" to prevent disclosure of Contractor IP and IP Materials for Contractor IP to other than Agency employees, contractors, consultants or new RFCS members. To provide for a consistent implementation of such measures, each Agency agrees to comply with the measures that are set forth herein.

As the term Contractor IP is used hereafter in this Section K, it shall be deemed to include both "Contractor IP" and "IP Materials for Contractor IP" as those terms are defined in the RFC Contract.

2.0 Contractor IP

2.1 Information and documents provided by ERG to the Agencies prior to Full System Acceptance may or may not contain Contractor IP as that term is defined in the Contract but, for purposes of this Section K, will be presumed to contain Contractor IP unless all the Agencies otherwise agree in writing.

2.2 The Agencies agree that they will jointly determine which information and documents provided by ERG after Full System Acceptance are properly considered Contractor IP and therefore subject to this Agreement.

3.0 ORCA Operations Manager Responsibilities

3.1 The Agencies, through the Joint Board, shall direct the ORCA Operations Manager to limit her distribution of Contractor IP to the following:

- a. The ORCA Operations Group, as defined in the Interlocal, Section I (Q);
- b. Any Joint Consultant as defined in the Interlocal, Section I (O); and
- c. Each Agency's Site Manager.

3.2 The Agencies, through the Joint Board, shall also direct the ORCA Operations Manager to:

- a. Sign a Nondisclosure Agreement (attached hereto as Attachment to Exhibit B-1);
- b. Obtain such Nondisclosure Agreements signed by the persons to whom she has distributed Contractor IP and any persons to whom the Site Manager has distributed Contractor IP as allowed under Section 4.0 below;
- c. Maintain a file of third party executed Nondisclosure Agreements;
- d. Apply password protection to any electronic depository of Contractor IP in order to limit access to those persons listed above who have signed the Nondisclosure Agreement;
- e. Require that all members of the ORCA Operations Group and all Joint Consultants shall: (1) keep any paper copies in areas not generally accessible to the public and (2) keep any electronic files in password-protected directories; and
- f. Following issuance of Full System Acceptance, provide access to copies of historical versions (prior to the current version) of Contractor IP for members of the Site Managers, the ORCA Operations Group, the ORCA Regional Program Administration Group or Joint Consultants who (1) have a need to review the historical versions of Contractor IP in order to perform their assignments for the Agencies or the Joint Board; and (2) have signed the Nondisclosure Agreement (attached hereto as Attachment 1 to Exhibit B-1).

4.0 Agency Responsibilities

Each Agency shall establish a process for receiving, reviewing, distributing, retaining and destroying Contractor IP. At a minimum, said process shall comply with the following provisions.

- a. The Site Manager (or designee in case of absence) shall be the only Agency contact authorized to receive a copy of Contractor IP from the ORCA Operations Manager.
- b. The Site Manager shall determine assignments for review of the Contractor IP and prepare/maintain a roster of the Agency employees and contractors who need to review the Contractor IP in order to perform their assignments for the Agency.
- c. The Site Manager shall make copies (paper or electronic) of the Contractor IP and distribute same only to those Agency employees or contractors who (1) are on the Site Manager's roster and have a need to review the Contractor IP in order to perform their assignments for the Agency; and (2) have signed the Nondisclosure Agreement.

- d. The Site Manager shall apply password protection to any electronic depository of Contractor IP in order to limit access to those persons on the roster who have signed the Nondisclosure Agreement.
- e. The Site Manager shall maintain a file of employee and contractor executed Nondisclosure agreements.
- f. The Site Manager shall not include Contractor IP in any general distribution to Agency staff or third parties.
- g. All Agency employees and contractors who obtain access to Contractor IP shall (1) keep any paper copies in areas not generally accessible to the public; and (2) keep any electronic files in password-protected directories.
- h. Following the issuance of Full System Acceptance, the Site Manager may retain one paper copy, one electronic copy and one CD of as-built or final versions of CDRLs and DRs (attached hereto as Attachment 2 to Exhibit B-1). Thereafter, the Site Manager may provide access to copies for Agency employees or contractors who (1) have a need to review the Contractor IP in order to perform their assignments for the Agency; and (2) have signed the Nondisclosure Agreement (Attachment 1 to Exhibit B-1).
- i. Training documents may be copied and provided for the purpose of training.

5.0 Requests for Disclosure of Contractor IP

In the event any Agency receives a request for public records that include Contractor IP, the Agency shall comply with applicable processes and procedures established by the Joint Board, including the process for notifying the Contractor. The Agencies agree to refuse¹ to disclose the requested Contractor IP unless the disclosure is authorized by the Contractor or ordered by a court.

¹ RCW 42.17.310(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

RCW 42.17.311 Nothing in RCW 42.17.310(1) (t) through (v) shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

Attachment 1 to Exhibit B-1 Nondisclosure Agreement

Individual Nondisclosure Agreement

This Agreement is entered into by and between _____ *[insert name of individual who is receiving Confidential Information, ("Recipient") and _____]* *[insert name of the Agency, ("Agency") (hereinafter "Parties").*

Recitals

- A. The ORCA fare payment system is operated and maintained by Vix Technology (USA) Inc. ("ORCA Contractor") on behalf of certain public transportation Agencies.
- B. The Agency is a provider of public transportation services that uses the ORCA fare payment system.
- C. Recipient is an employee or contractor of the Agency and has a "need to know" Confidential Information related to the ORCA System in order to perform his/her employment or contractual duties.

Terms

In consideration of the mutual covenants contained herein and other consideration provided to the Recipient by the Agency, the Parties hereto agree as follows:

- 1.0 Confidential Information. The term "Confidential Information" used herein shall be deemed to include all documents and information related to the ORCA System that are identified as "Confidential," Proprietary" or the copyright, trade secret, or other intellectual property of the ORCA Contractor or other persons or entities.
- 2.0 Purpose. Confidential Information is made available to Recipient solely for the purpose of enabling Recipient to carry out his or her employee functions or his or her functions under a contract with the Agency ("ORCA Purpose"). Recipient may use such Confidential Information only to the extent required to accomplish the ORCA Purpose. Recipient shall not use, copy, disclose, disseminate or distribute any Confidential Information for any other purpose without the prior written consent of the Agency. All Confidential Information will remain the property of its owner.
- 3.0 Responsibilities of Recipient. Recipient will protect any Confidential Information from any unauthorized use, disclosure, copying, dissemination or distribution. Recipient specifically shall:
 - a. ensure that proper and secure storage is provided for the Confidential Information and take all reasonable and necessary precautions to maintain the confidentiality of and prevent the accidental disclosure of any Confidential Information;
 - b. not make notes or allow notes to be made except as necessary in connection with the ORCA Purpose;

- c. make copies or excerpts of the Confidential Information only as reasonably required for the ORCA Purpose;
- d. not deliver, distribute, display, demonstrate or otherwise make available the Confidential Information to any person(s) except as allowed with the prior written consent of the Agency;
- e. not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature;
- f. take all reasonable steps to prevent unauthorized use or disclosure of Confidential Information and to regain possession of Confidential Information if unauthorized use or disclosure is discovered; and
- g. immediately notify the Agency if the Recipient becomes aware of any loss or unauthorized use, access, copying or disclosure of any of the Confidential Information.

4.0 Public Disclosure Act. If a public disclosure request under the Washington Public Disclosure Act, RCW 42.56 et seq., is made for Confidential Information or the Recipient is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose Confidential Information, the Recipient must immediately notify the Agency of the public disclosure request or legal requirement and use its best endeavors (without breach of applicable law) to delay and withhold disclosure until the Agency or the ORCA Contractor has had a reasonable opportunity to oppose disclosure by lawful means.

5.0 Return of Confidential Information. Upon demand made at any time by the Agency or upon the termination of the Recipient's employment or the Recipient's contract, Recipient shall immediately return to the Agency all Confidential Information and any copies or excerpts thereof.

6.0 Enforcement. All of the transit agencies that are parties to the Amended and Restated Interlocal Cooperation Agreement for Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System ("Interlocal Agreement") (April 2009) are third party beneficiaries to this Agreement, and these agencies may bring an action to enforce the Agency's rights under this Agreement.

7.0 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

8.0 General. This Agreement may not be amended except in writing signed by both parties. If any provision of this Agreement is found to be unenforceable, that provision will be severed and the remainder of this Agreement will continue in full force and effect. Nothing herein will be deemed to create any agency relationship, joint venture or partnership between the parties.

9.0 Notices. Any notices hereunder will be given to the appropriate Party at the address specified below or at such other address as the Party specifies in writing. Such notice will be deemed given upon personal delivery; five days after the date of mailing if sent by certified mail, postage prepaid; or one day after having been sent by either confirmed facsimile or by commercial overnight courier with verification of receipt.

10.0 Survival. The terms of this Agreement shall survive any termination of the employment relationship or the contract between the Recipient and the Agency.

IN WITNESS WHEREOF, the parties hereto have signed this Nondisclosure Agreement on the dates indicated below.

Print Recipient name:	Print Agency name:
Recipient signature:	Agency rep signature:
Date signed:	Date signed:
Address:	Address:
Email:	Email:
Phone:	Phone:

Attachment 2 to Exhibit B-1 Authorized Documents Retained by Agencies

This is the authorized list of as-built or final versions of CDRs and DRs each Agency is authorized to retain.

The list is maintained in the Record Center on the ORCA Regional Program Administration Agency SharePoint site.